



CABINET FOR HEALTH AND FAMILY SERVICES	Subject: Participant Directed Services SOP Title: Employer/Employee Requirements PDS-SOP-6.21
Issue Type: ☒ New ☐ Revised	Source(s) of Authority: N/A Forms: N/A
Supersedes: N/A	Effective: 06/2026
Approval Date: 02/20/2026	Revision Date: N/A

PURPOSE

The Participant Directed Services (PDS) standard operating procedures (SOP) employer/employee requirements section outlines the PDS employee requirements and the role the participant or PDS representative has as the PDS employer of record (see PDS-SOP 6.30) . The PDS employee must meet specific screening, training, and qualifying criteria to be paid for providing PDS. The goal of this section is to ensure that the participant and PDS representative, Case Management Agency (CMA), and Financial Management agency (FMA) understand the requirements of the PDS employer and employee and that the CMA and FMA conduct the necessary steps to issue proper payment to PDS employees.

POLICY

PDS Employee Requirements

1. A PDS employee serving a PDS participant shall meet the following criteria:
 - a. Be selected by the participant or PDS representative;
 - b. Be eighteen (18) years or age or older;
 - c. Be a citizen of the United States with a valid Social Security number or have and maintain a valid work permit if not a US citizen;
 - d. Be able to communicate effectively with the participant, PDS representative and family;
 - e. Be able to understand and carry out instruction;
 - f. Be able to keep records as required by the participant or PDS representative; and
 - g. If transporting the participant, the employee must have and maintain a valid driver's license and liability insurance.
2. A prospective PDS employee must complete the following forms prior to delivering PDS and being paid:
 - a. PDS Forms:
 - i. PDS Employment Application;
 - ii. Kentucky PDS Employee/Provide Contract (this form also needs to be completed anytime there is a change to PDS services, hours or pay wage); and
 1. Page 1: Records the number of hours and type of service to be provided by the PDS employee and the agreed upon hourly rate of pay.
 - a. The participant or PDS representative determines the hourly wage for the PDS employee.
 - b. The services listed on the contract must match the services listed in the participant's Person-Centered Service Plan (PCSP) for both PDS hours and hourly rate of pay.
 2. Page 2 and 3: Contains acknowledgements about responsibilities and obligations of the PDS employee and captures the signatures of the PDS employee, PDS participant and PDS representative, when applicable.
 3. Page 4: Reference table with service billing codes.
 - iii. If the PDS employee is providing shared living services through the Supports for Community Living (SCL) waiver, a Shared Living contract must be completed.



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1. The Shared Living contract must clearly detail the specific care to be provided to the participant in exchange for detailed room and board expenses
- b. Federal Forms:
 - i. Federal Tax I-9 form (Employment Eligibility Verification); and
 - ii. Federal Tax W-4 form (Employee's Withholding Allowance Certification).
- c. State Forms:
 - i. KY Tax K-4 form (Employee's Exemption Certificate).
3. A prospective PDS employee must complete and pass a criminal background check prior to employment. There are two options to conduct the criminal background check:
 - a. Submit to a check conducted by Kentucky Applicant Registry and Employment Screening (KARES), as referenced in [906 KAR 1:190](#), which is an electronic interface and nationwide background investigation and registry system; or
 - b. Submit to a check by the Administrative Office of the Courts (AOC)
 - i. If the prospective PDS employee lived or worked outside the state of Kentucky within the last 12 months, an out-of-state equivalent background check must be completed for each location lived or worked.
 - c. Prospective PDS employees may not have any of the following disqualifying results from the background check(s):
 - i. A prior conviction for an offense as described in KRS 17.165(1) through (3);
 - ii. A prior felony conviction;
 - iii. A conviction of trafficking, manufacturing, or possessing an illegal drug during the past five years (Acquired Brain Injury (ABI), ABI-Long Term Care (LTC), Michelle P, and Supports for Community Living (SCL) waivers only);
 - iv. A drug conviction, felony plea bargain, or amended plea bargain within the past five (5) years (Home and Community Based (HCB) waiver only); or
 - v. A conviction for abuse, neglect or exploitation.
 - d. Prospective PDS employees who have a driving under the influence conviction, amended plea bargain, or diversion in the past year shall not transport participants.
4. A prospective PDS employee must complete and pass registry checks.
 - a. A KARES check also covers required registry checks.
 - b. If KARES was not used for the criminal background check, the prospective PDS employee must submit to the following registry checks as well as the equivalent out-of-state registry checks for each location the prospective PDS employee lived or worked outside of Kentucky in the last twelve months:
 - i. A Nurse Aide Abuse Registry (NAR) check maintained in accordance with [906 KAR 1:100](#) prior to providing paid PDS;
 1. A PDS employee shall not have a validation of abuse, neglect, or misappropriation of property
 - ii. A Caregiver Misconduct Registry (CMR) check prior to providing paid PDS;
 1. A PDS employee shall not be listed on a caregiver misconduct registry
 - iii. A Central Registry check (CRC) maintained in accordance with [922 KAR 1:470](#) which must be completed 30 days from the first day the PDS employee provides paid PDS;



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1. A PDS employee shall not have a substantiated finding or open case of abuse, neglect or exploitation through adult protective services (APS) or child protective services (CPS).
- iv. A sex offender registry check prior to providing paid PDS (MP and SCL only)
 1. A PDS employee shall not be listed on a sex offender registry
5. A PDS employee cannot have a prior substantiated case of Medicaid fraud by the Office of Medicaid Fraud and Abuse Control, Office of Inspector General (OIG), or Office of Attorney General (OAG) or Medicare fraud, whether revealed through the criminal background check, registry checks, or other sources.
6. A PDS employee must complete the following *training/certification requirements*:
 - a. General 1915(c) waiver PDS training requirements must be provided prior to providing paid PDS
 - i. Complete and verify training on principles of self-determination (refer to PDS-SOP 6.15);
 - ii. Complete and verify training on employee contracts;
 - iii. Complete and verify training on background checks;
 - iv. Complete and verify training on electronic visit verification (refer to PDS-SOP 26.3)
 - v. Complete and verify training on the reporting of abuse, neglect, and exploitation (refer to PDS-SOP 6.31);
 - vi. Complete and verify training on person-centered planning (refer to PDS-SOP 6.29);
 - vii. Complete and verify training on fraud, waste, and abuse (refer to PDS-SOP 6.32);
 - viii. Complete and verify training on any additional topics required by the 1915(c) waiver, the CMA, the FMA, the Department of Aging and Independent Living, the Department of Medicaid Services (DMS), or the PDS employer (participant or PDS representative, when applicable).
 - b. Prior to providing PDS and annually thereafter, complete the attendant care training and score 80% or higher on the attendant care certification test (HCB only);
 - c. Obtain first aid certification within six months of providing paid PDS and maintain first aid certification for the duration of being a PDS employee;
 - i. Except as established in subparagraph e
 - ii. Although not required by regulation, Medicaid encourages seizure-specific first aid training for employees providing PDS to participants with a history of seizures or who manage seizures as a part of their daily lives.
 - d. Obtain CPR certification by a nationally accredited entity within six months of employment and maintain CPR certification for the duration of being a PDS employee;
 - i. Except as established in subparagraph 6(e) of this paragraph.
 - e. The participant or PDS representative can choose and attest to not require their PDS employees to have First Aid and/or CPR certification.
 - i. If a participant or PDS representative elects to not require the PDS employee to have First Aid and/or CPR certification, the participant or PDS Representative must sign the PDS Employment CPR/First Aid Acknowledgement form and upload the form to the Medicaid Waiver Management Application (MWMA).



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- ii. If a participant or PDS representative elect solely to not require the PDS employee to have CPR certification, the participant or PDS Representative can sign the PDS employment CPR/First Aid acknowledgement form and upload the form to MWMA or the participant's Do Not Resuscitate (DNR) order must be up uploaded to MWMA.
- f. For SCL participants only, a PDS employee must complete College of Direct Supports (CDS) training within 6 months of the start of employment to continue to be a PDS employee. The CDS modules to be completed are:
 - i. KY CDS Maltreatment of Vulnerable Adults & Children
 - ii. KY CDS Individual Rights and Choices
 - iii. KY CDS Safety at Home and in the Community
 - iv. KY CDS Supporting Healthy Lives
 - v. KY CDS Person Centered Planning
 - vi. Community Inclusion
 - vii. DSP Professionalism
 - viii. Introduction to Developmental Disabilities
 - ix. Professional Documentation Practices
 - x. Teaching people with developmental disabilities
7. A PDS employee must complete the *following screenings*:
 - a. Within 30 days of employment and annually thereafter, complete a TB risk assessment as identified in [902 KAR 20:205](#).
 - b. Pass a six-panel drug test prior to providing PDS (HCB only).
8. A prospective PDS employee who is a legally responsible individual (LRI) to the participant must be reviewed and approved by the operating agency prior to providing paid PDS. Refer to PDS-SOP 6.33.
9. If a PDS employee will be providing Community Access, Community Guide or Supported Employment SCL waiver services the case manager must verify and document the PDS employee's qualifying credentials as outlined in the applicable waiver service provider qualifications.
10. The PDS employee must comply with all requirements to capture PDS service delivery using the FMA electronic visit verification (EVV) system, refer to PDS-SOP 6.23.
11. A PDS employee cannot provide more than 40 hours of PDS in a calendar week, Sunday through Saturday (HCB, MP and SCL waivers only).

PDS Employee Hiring Process

1. The Financial Management Agency (FMA) is responsible for submitting and securing criminal background and registry checks for up to four (4) PDS employees during every participant plan of care year.
 - a. The FMA will share the results of the criminal background and registry checks with the PDS participant (or representative if applicable) and the case manager
 - b. Up to four criminal background and registry check documentation is done by the FMS. If there are more employees in a person-centered plan year, the PDS participant or PDS representative as applicable must secure and provide criminal background and registry



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check documentation to the case manager. The PDS participant (or representative if applicable) will share the results of any criminal background and registry checks with the FMA and the case manager.

2. Any PDS employee seeking to work for more than one participant, regardless of relationship, must complete and submit original paperwork for each participant.
3. The PDS employee shall not receive payment to provide PDS until the following occurs:
 - a. The PDS participant receives a prior authorization for PDS services on the Person-Centered Service Plan;
 - b. All of the PDS Employee forms mentioned above have been appropriately completed and signed;
 - c. The PDS employee has been trained on the above-mentioned topics by the participant or PDS representative and case manager (when assistance is needed); and
 - d. The results of the PDS employee criminal background checks have been returned and the results are in compliance with the appropriate Kentucky Administrative Regulations (KAR).
4. It is the responsibility of the CMA to provide the necessary technical assistance and support to verify the PDS employee forms and training are completed.
5. The CMA shall verify that the criminal background and registry checks documentation meets the PDS employee eligibility requirements and add the employee as an “associated employee” to the PDS Service Type in the MWMA.
 - a. PDS Eligible Employee forms were designed for HCB and for SCL to assist the case manager with compiling the necessary PDS Employee documents and communicating and coordinating with the FMA.
6. It is the responsibility of the FMA to orient the PDS employee and set up the FMA electronic visit verification (EVV) system to guarantee appropriate payment for PDS.
7. The table on the next two pages identify the PDS form/requirement, the entity who is responsible for completion of the form/requirement and the frequency of completion of the form/requirement.
 - a. Since the participant or PDS representative, when applicable, has employer authority in PDS, they are identified as ultimately responsible for all forms/requirements in the responsibility chart. The chart also identifies whether the case manager or the FMA have a role.

PDS Employee Forms By Entity Responsibility and Timeline

PDS Employee Form Name	Participant/PDS Representative	CMA	FMA	Initial	Other
PDS Employment Application	Yes	Yes	N/A	Yes	N/A
KY PDS Employee/Provider Contract*	Yes	Yes	N/A	Yes	When change/revision of hours or wage
Federal Tax I-9 Form	Yes	N/A	Yes	Yes	N/A
Federal Tax W-4 Form	Yes	N/A	Yes	Yes	N/A
KY Tax K-4 Form	Yes	N/A	Yes	Yes	N/A



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PDS Employee Requirements By Entity Responsibility and Timeline

PDS Employee Requirements	Participant/PDS Representative	CMA	FMA	Initial	Annual
Verify US citizen or work permit	Yes	N/A	Yes	Yes	Maintain
Criminal Background Check	Yes- after first 4 of the participant's plan of care year	N/A	Yes- up to 4 of the participant's plan of care year	Yes	Upon request
Registry Checks	Yes- after first 4 of the participant's plan of care year	N/A	Yes- up to 4 of the participant's plan of care year	Yes	Upon request
6 Panel Drug Test (HCB only)	Yes	Yes	N/A	Yes	N/A
PDS Employee Training and Verification	Yes	Yes	N/A	Yes	N/A
Employee Attendant Care Training (HCB only)	Yes	Yes	N/A	Yes	Yes
PDS Eligible Employee Form (HCB and SCL waiver)	Yes	Yes	Yes	N/A	Maintain
First Aid (Unless attested to not require PDS employee)	Yes	N/A	Yes	6 months	Maintain
CPR (Unless attested to not require PDS employee)	Yes	N/A	Yes	6 months	Maintain
College of Direct Supports training (SCL waiver)	Yes	Yes	N/A	6 months	N/A
TB Risk Assessment	Yes	Yes	Yes	3 months	Yes
LRI Exemption Review Request	Yes	Yes	Yes	Yes	
Driver's License and Proof of Insurance (If Transporting)	Yes	Yes	Yes	Yes	Maintain
Qualifying credentials (SCL waiver only for Community Access, Community Guide and Supported Employment services)	Yes	Yes	Yes	Yes	N/A

Cost of PDS Employee Background Checks

1. The cost of up to four criminal background and registry checks for PDS employees (either initial or re-run) are covered by the FMA each plan of care year.
 - a. The FMA only covers the cost of criminal background and registry checks. Expenses for other PDS employee screening is not covered by the FMA.
2. If a PDS participant needs to have more than four criminal background and registry checks in a plan of



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care year the participant is required to cover the cost.

Payment to Legally Responsible Individuals

1. A legally responsible individual (LRI) is defined as:
 - a. Parent, step-parent, adoptive parent, or court appointment legal guardian of minor children (children younger than 18).
 - b. Spouses or court appointment legal guardians of adults (age 18 and older).
2. An LRI can only be paid to provide PDS if they provide extraordinary care.
3. All of the requirements outlined in the LRI SOP must be met for payment(s) to be made to an LRI. Refer to PDS-SOP 6.33.

PDS Employee Criminal Background and Registry Checks

1. To conduct an employee screening through KARES click-on the following link:
[KARES- Kentucky Applicant Registry and Employment Screening](#)
2. To conduct the criminal background and registry checks individually for the state of Kentucky:
 - a. Administrative Office of the [Courts](#) check
 - i These checks can be submitted online, by mail, or in person.
 - b. Nurse Aide and Abuse Registry check (see more information below)
 - c. Central Registry check [DPP-156](#)
 - i The employee must complete the form DPP-156 to authorize the employer to complete the check.
 - d. [Caregiver Misconduct Registry](#) check
 - i These checks can be completed online as a Vulnerable Adult Service Provider.
 - e. The [Sex Offender Registry](#) (MP and SCL) is maintained by Kentucky State Police.

Nurse Aide Abuse Registry Instructions

1. Go to <https://kybn.boardsnursing.org/licenselookup>.
2. Enter potential PDS employee's first and last name (do not use middle initials or middle names).
3. Separate checks must be made for any aliases.
4. Search for results.
5. If there are no names listed, print the search results.
 - a. The printed record must capture the date the search was conducted.
6. If there are names listed, print the search results so the date of the search is captured in the printout and then validate each name:
 - a. Select "View Report" associated with the name.
 - i. Nurse aides are identified as having SRNA certification. If the nurse aid is listed on the Office of Inspector General (OIG) Nurse Aide Abuse Registry, the report will state: "Is listed on the Kentucky Office of the Inspector General (OIG) Nurse Aide Abuse Registry. For more information, contact the Kentucky OIG, Division of Licensing and Regulation at 502-564-7963."
 1. Print the report.
 2. If the individual is listed on the registry, verify the individual listed in the



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- report is the prospective PDS employee.
3. If the individual listed is the prospective PDS employee, they are ineligible to be a PDS employee.
 - ii. Kentucky Board of Nursing licenses additional professionals (e.g. RN, APRN, LPN, etc.).
 1. Print the report.
 2. Should an adverse action be documented in the report, whomever is conducting the check may need to contact KBN to verify abuse if the individual in the report has been verified to be the prospective PDS employee.
 7. Nurse Aide Abuse Registry checks are to be filed in the prospective PDS employee file.